

AMENDED IN SENATE AUGUST 29, 2003

AMENDED IN SENATE JULY 8, 2003

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 17

Introduced by Assembly Member Kehoe

(Coauthors: Assembly Members Chan, Chu, Diaz, Firebaugh, Goldberg, Hancock, Koretz, Laird, Leno, Levine, Lieber, Longville, Montanez, Nation, Oropeza, Steinberg, Vargas, Wiggins, and Yee)

(Coauthors: Senators Burton, Kuehl, and Vasconcellos)

December 2, 2002

An act to add Section 10295.3 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 17, as amended, Kehoe. State contracts: acquisition of goods or services.

Existing law authorizes the Department of General Services to contract with suppliers to acquire goods and services for state agencies.

This bill would prohibit a state agency from entering into a contract for the acquisition of goods or services in the amount of \$100,000 or more with a ~~vendor or~~ contractor who, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between the domestic partners and

spouses of those employees, except ~~as otherwise specified under specified circumstances.~~ This bill would *exempt certain contracts from the bill and would* specify that a contractor ~~or vendor~~ is not deemed to discriminate between employees with spouses and employees with domestic partners in the provision of benefits if the contractor ~~or vendor~~, in providing the benefits, pays for the actual costs incurred in obtaining the benefit.

This bill would also require that every state contract to acquire goods and services contain a statement by the ~~vendor or~~ contractor certifying that the ~~vendor or~~ contractor is in compliance with these provisions. The bill would require that the contract be subject to certain penalties if the contractor ~~or vendor~~ falsely certifies its compliance, unless the ~~vendor or~~ contractor provides proof that it has complied, or is in the process of complying, with these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 10295.3 is added to the Public Contract
- 2 Code, to read:
- 3 10295.3. (a) (1) Notwithstanding any other provision of
- 4 law, no state agency may enter into any contract for the acquisition
- 5 of goods or services in the amount of one hundred thousand dollars
- 6 (\$100,000) or more with a ~~vendor or~~ contractor who, in the
- 7 provision of benefits, discriminates between employees with
- 8 spouses and employees with domestic partners, or discriminates
- 9 between the domestic partners and spouses of those employees.
- 10 (2) For purposes of this section, “contract” includes contracts
- 11 with a cumulative amount of one hundred thousand dollars
- 12 (\$100,000) or more per ~~vendor or~~ contractor in each fiscal year.
- 13 (3) For purposes of this section, “domestic partner” means one
- 14 of two persons who has filed a declaration of *domestic* partnership
- 15 with the Secretary of State pursuant to Division 2.5 (commencing
- 16 with Section 297) of the Family Code.
- 17 ~~(4) These benefits may include, but are not limited to:~~
- 18 ~~(A) Bereavement leave.~~
- 19 ~~(B) Family medical leave.~~
- 20 ~~(C) Health benefits.~~
- 21 ~~(D) Membership or membership discounts.~~

1 ~~(E) Moving expenses.~~

2 ~~(F) Pension benefits.~~

3 ~~(G) Retirement benefits.~~

4 ~~(H) Travel benefits.~~

5 ~~(5) This section does not apply to any contracts executed or~~
6 ~~amended prior to July 1, 2004, or to bid packages advertised and~~
7 ~~made available to the public, or any competitive or sealed bids~~
8 ~~received by the state, prior to July 1, 2004, unless and until those~~
9 ~~contracts or property contracts are amended after June 30, 2004,~~
10 ~~and would otherwise be subject to this section.~~

11 ~~(b) Contractors or vendors shall treat as confidential to the~~
12 ~~maximum extent allowed by law or by the requirement of the~~
13 ~~contractor's or vendor's insurance provider, any request by an~~
14 ~~employee or applicant for employment for domestic partner or~~
15 ~~spousal benefits or any documentation of eligibility for domestic~~
16 ~~partner or spousal benefits submitted by an employee or applicant~~
17 ~~for employment.~~

18 ~~(c) After taking all reasonable measures to find a contractor or~~
19 ~~vendor that complies with this section, the requirements of this~~
20 ~~section may be waived under any of the following circumstances:~~

21 ~~(1) Whenever there is only one prospective contractor willing~~
22 ~~to enter into a specific contract with the state agency.~~

23 ~~(2) If the contract is necessary to respond to an emergency that~~
24 ~~endangers the public health or safety and no entity which complies~~
25 ~~with the requirements of this section capable of responding to the~~
26 ~~emergency is immediately available.~~

27 ~~(3) Where the requirements of this section violate, or are~~
28 ~~inconsistent, with the terms or conditions of a grant, subvention or~~
29 ~~agreement with a public agency or the instructions of an authorized~~
30 ~~representative of any public agency with respect to any grant,~~
31 ~~subvention, or agreement, provided that a good faith attempt has~~
32 ~~been made by the agency to change the terms or conditions of any~~
33 ~~grant, subvention, or agreement to authorize application of this~~
34 ~~section.~~

35 ~~(4) Where there are no qualified responsive bidders or~~
36 ~~prospective contractors or vendors who could comply with the~~
37 ~~requirements of this section and the contract is essential to the state~~
38 ~~and state residents.~~

39 ~~(5) Where the contractor or vendor is providing wholesale or~~
40 ~~bulk water, power or natural gas, the conveyance or transmission~~

1 of the same, or ancillary services such as spinning reserve, voltage
2 control, or loading scheduling, as required for assuring reliable
3 services in accordance with good utility practice, provided that the
4 purchase of the same may not practically be accomplished through
5 the standard competitive bidding procedures; and further provided
6 that this exemption does not apply to contractors, vendors, or
7 franchises providing direct retail services to end users.

8 (d) (1) In the event that the contractor's or vendor's actual cost
9 of providing a certain benefit for the domestic partner of an
10 employee exceeds that of providing it for the spouse of an
11 employee, or the contractor's or vendor's actual cost of providing
12 a certain benefit for the spouse of an employee exceeds that of
13 providing it for the domestic partner of an employee, the
14 contractor or vendor may not be deemed to discriminate in the
15 provision of benefits if the contractor or vendor conditions
16 providing the benefit upon the employee agreeing to pay the
17 excess costs.

18 (2) The contractor or vendor is not deemed to discriminate in
19 the provision of benefits if the contractor or vendor, in providing
20 the benefits, pays the actual costs incurred in obtaining the benefit.

21 (3) In the event a contractor or vendor is unable to provide a
22 certain benefit, despite taking reasonable measures to do so, the
23 contractor or vendor may not be deemed to discriminate in the
24 provision of benefits if the contractor or vendor provides the
25 employee with a cash payment equal to the amount that the
26 contractor or vendor pays to provide that benefit to the spouse of
27 an employee.

28 (e) A vendor or contractor may not be deemed to discriminate
29 in the provision of benefits between employees with spouses and
30 employees with domestic partners, or between the domestic
31 partners and spouses of those employees, if the vendor or
32 contractor does not discriminate in the provision of those benefits
33 between employees with spouses and employees with domestic
34 partners, or between the domestic partners and spouses of those
35 employees, in doing any of the following:

36 (1) Offering the same benefits to employees with domestic
37 partners and employees with spouses and offering the same
38 benefits to domestic partners and spouses of employees.

~~(2) Electing to provide the same benefits to individuals that are provided to employees' spouses and employees' domestic partners.~~

~~(3) Electing to provide benefits on a basis unrelated to an employee's marital status or domestic partnership status, including but not limited to, allowing each employee to designate a legally domiciled member of the employee's household as being eligible for benefits.~~

~~(4) Electing not to provide benefits to employees based on their marital status or domestic partnership status, or electing not to provide benefits to employees' spouses and to employees' domestic partners.~~

~~(f) (1) Every contract subject to this chapter shall contain a statement by which the vendor or contractor certifies that the vendor or contractor is in compliance with this section.~~

~~(2) The department or other contracting agency shall enforce this section pursuant to its existing enforcement powers.~~

~~(3) (A) If a vendor or contractor falsely certifies that it is in compliance with this section, the contract with that vendor or contractor shall be subject to Article 9 (commencing with Section 10420), unless, within a time period specified by the department or other contracting agency, the vendor or contractor provides to the department or agency proof that it has complied, or is in the process of complying, with this section.~~

~~(4) (A) Subject to subparagraph (B), this section does not apply to any contracts executed or amended prior to January 1, 2007, or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the state, prior to January 1, 2007, unless and until those contracts or property contracts are amended after December 31, 2006, and would otherwise be subject to this section.~~

~~(B) If a duration of a contract executed or amended prior to January 1, 2007, is for more than one year going beyond January 1, 2008, this section shall apply to the contract on January 1, 2008.~~

~~(5) The requirements of this section shall apply only to those portions of a contractor's operations that occur under any of the following conditions:~~

~~(A) Within the state.~~

~~(B) On real property outside the state if the property is owned by the state or if the state has a right to occupy the property, and~~

1 *if the contractor's presence at that location is connected to a*
2 *contract with the state.*

3 *(C) Elsewhere in the United States where work related to a state*
4 *contract is being performed.*

5 *(b) Contractors shall treat as confidential to the maximum*
6 *extent allowed by law or by the requirement of the contractor's*
7 *insurance provider, any request by an employee or applicant for*
8 *employment for domestic partner or spousal benefits or any*
9 *documentation of eligibility for domestic partner or spousal*
10 *benefits submitted by an employee or applicant for employment.*

11 *(c) After taking all reasonable measures to find a contractor*
12 *that complies with this section as determined by the state agency,*
13 *the requirements of this section may be waived under any of the*
14 *following circumstances:*

15 *(1) Whenever there is only one prospective contractor willing*
16 *to enter into a specific contract with the state agency.*

17 *(2) If the contract is necessary to respond to an emergency, as*
18 *determined by the state agency, that endangers the public health,*
19 *welfare, or safety, or the contract is necessary for the provision of*
20 *essential services, and no entity that complies with the*
21 *requirements of this section capable of responding to the*
22 *emergency is immediately available.*

23 *(3) Where the requirements of this section violate, or are*
24 *inconsistent, with the terms or conditions of a grant, subvention,*
25 *or agreement, provided that a good faith attempt has been made*
26 *by the agency to change the terms or conditions of any grant,*
27 *subvention, or agreement to authorize application of this section.*

28 *(4) Where the contractor is providing wholesale or bulk water,*
29 *power, or natural gas, the conveyance or transmission of the same,*
30 *or ancillary services, as required for assuring reliable services in*
31 *accordance with good utility practice, provided that the purchase*
32 *of the same may not practically be accomplished through the*
33 *standard competitive bidding procedures; and further provided*
34 *that this exemption does not apply to contractors providing direct*
35 *retail services to end users.*

36 *(d) (1) If there is a difference in the cost to provide a certain*
37 *benefit to a domestic partner or spouse, the contractor is not*
38 *deemed to be in violation of this section so long as it permits the*
39 *employee to pay any excess costs.*



1 (2) *The contractor is not deemed to discriminate in the*
2 *provision of benefits if the contractor, in providing the benefits,*
3 *pays the actual costs incurred in obtaining the benefit.*

4 (3) *In the event a contractor is unable to provide a certain*
5 *benefit, despite taking reasonable measures to do so, the*
6 *contractor may not be deemed to discriminate in the provision of*
7 *benefits.*

8 (4) *For any contracts executed or amended on or after July 1,*
9 *2004, and prior to January 1, 2007, and to bid packages advertised*
10 *and made available to the public, or any competitive or sealed bids*
11 *received by the state, on or after July 1, 2004, and prior to January*
12 *1, 2007, unless and until those contracts or bid packages are*
13 *amended after June 30, 2004, but prior to January 1, 2007, and*
14 *would otherwise be subject to this section, a contractor may*
15 *require an employee to pay the costs of providing additional*
16 *benefits that are offered to comply with this section if an employee*
17 *elects to have the additional benefits. This paragraph shall not be*
18 *construed to permit a contractor to require an employee to cover*
19 *the costs of providing any benefits, which have otherwise been*
20 *provided to all employees regardless of marital or domestic*
21 *partner status.*

22 (e) *A contractor is not deemed to be in violation of this section*
23 *if the contractor does any of the following:*

24 (1) *Offers the same benefits to employees with domestic*
25 *partners and employees with spouses and offers the same benefits*
26 *to domestic partners and spouses of employees.*

27 (2) *Elects to provide the same benefits to individuals that are*
28 *provided to employees' spouses and employees' domestic*
29 *partners.*

30 (3) *Elects to provide benefits on a basis unrelated to an*
31 *employee's marital status or domestic partnership status,*
32 *including, but not limited to, allowing each employee to designate*
33 *a legally domiciled member of the employee's household as being*
34 *eligible for benefits.*

35 (4) *Elects not to provide benefits to employees based on their*
36 *marital status or domestic partnership status, or elect not to*
37 *provide benefits to employees' spouses and to employees'*
38 *domestic partners.*

1 (f) (1) Every contract subject to this chapter shall contain a
2 statement by which the contractor certifies that the contractor is
3 in compliance with this section.

4 (2) The department or other contracting agency shall enforce
5 this section pursuant to its existing enforcement powers.

6 (3) (A) If a contractor falsely certifies that it is in compliance
7 with this section, the contract with that contractor shall be subject
8 to Article 9 (commencing with Section 10420), unless, within a
9 time period specified by the department or other contracting
10 agency, the contractor provides to the department or agency proof
11 that it has complied, or is in the process of complying, with this
12 section.

13 (B) The application of the remedies or penalties contained in
14 Article 9 (commencing with Section 10420) to a contract subject
15 to this chapter shall not preclude the application of any existing
16 remedies otherwise available to the department or other
17 contracting agency under its existing enforcement powers.

18 (g) Nothing in this section is intended to regulate the
19 contracting practices of any local jurisdiction.

20 (h) This section shall be construed so as not to conflict with
21 applicable federal laws, rules, or regulations. In the event that a
22 court or agency of competent jurisdiction holds that federal law,
23 rule, or regulation invalidates any clause, sentence, paragraph, or
24 section of this code or the application thereof to any person or
25 circumstances, it is the intent of the state that the court or agency
26 sever that clause, sentence, paragraph, or section so that the
27 remainder of this section shall remain in effect.

28 SEC. 2. Section 10295.3 of the Public Contract Code shall not
29 be construed to create new enforcement authority or responsibility
30 in the department or any other contracting agency.